

DISTRICT COURT JUDGE BENJAMIN J. SETTLE
MAGISTRATE JUDGE DAVID W. CHRISTEL

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

CHARLES REED,

Plaintiff,

v.

STEVEN HAMMOND, LARA STRICK,
ROB WEBER, SARA SMITH, and JOHN
DOES NO. 1-6, in their Individual Capacities.

Defendants.

Case No. 3:16-CV-05993-BHS-DWC

SECOND AMENDED COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Charles V. Reed alleges and avers the following:

INTRODUCTION

This action arises under the Eighth Amendment to the United States Constitution and 42 U.S.C. § 1983, seeking damages caused by defendants' violation of Mr. Reed's constitutional rights, specifically his Eighth Amendment right to be free from cruel and unusual punishment. Mr. Reed has Hepatitis C and was denied access to medical treatment by the Washington State Department of Corrections (the "DOC") medical staff who were deliberately indifferent to his serious medical need. The defendants named in this Complaint knew of Mr. Reed's serious medical need and disregarded it by failing to provide available treatment, instead allowing it to progress unnecessarily into a much more serious condition. As a result, Mr. Reed suffered scarring of his liver, pain and suffering, and additional harm to be proven at trial.

1. This action also seeks compensatory damages for medical malpractice against all defendants for their roles in the denial of Mr. Reed's medical care.

JURISDICTION

2. The Court has jurisdiction over this matter pursuant to the provisions of 28 U.S.C. §§ 1331 and 1343, the provisions of 42 U.S.C. §§ 1983 and 1988, and the Constitution of the United States—specifically, the Eighth and Fourteenth Amendments thereto.

3. This Court has supplemental jurisdiction over the state law claim pleaded below under 28 U.S.C. § 1367 by virtue of the fact that it arises out of the same events as the claims alleged herein under federal and constitutional law.

VENUE

4. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims asserted by Mr. Reed occurred in this judicial district, namely in Grays Harbor County, Washington.

PARTIES

5. Plaintiff Charles Reed is an inmate at Stafford Creek Corrections Center in Grays Harbor County, Washington. He is a citizen of the United States of America.

6. Defendant Steven Hammond, MD was at all times material hereto the Chief Medical Officer for the DOC. In this role, Dr. Hammond directed and administered the medical service treatment programs for offenders within the Department of Corrections. He had overall responsibility and authority for establishing, monitoring, and evaluating standards of clinical care and practice within medical services. He also monitored staff performance to assure compliance with clinical care and practice standards.

7. Defendant Lara Strick, MD was at all times material hereto the Statewide Infectious Disease Physician for the DOC. In this role, she analyzed, directed, and coordinated medical care provided to offenders with Hepatitis B, Hepatitis C, HIV, and other infectious diseases statewide.

1 scarring of the liver, F1 indicating mild scarring, F2 indicating moderate scarring, F3
2 indicating severe scarring, and F4 indicating very severe scarring known as cirrhosis.

3 12. On or about August 18, 2014, Mr. Reed was transferred to Stafford Creek
4 Corrections Center. Upon arrival, he requested treatment for his Hepatitis C, with both
5 prerequisites to treatment now being met. At that time, the DOC had a highly effective form
6 of treatment called a “Direct-Acting Anti-Viral” (“DAA”) available for Hepatitis C patients.

7 13. On May 1, 2015, the DOC adopted a triage protocol for Hepatitis C treatment.
8 Under this protocol, inmates with METAVIR scores of F2 or below would not ordinarily be
9 eligible for treatment. On information or belief, the DOC adopted this protocol based on
10 consideration of financial constraints, not based on medical judgment. The DOC did not
11 regularly reevaluate this triage protocol to determine if it continued to be necessary given
12 current financial constraints.

13 14. Mr. Reed was evaluated for Hepatitis C treatment by Beth Eschbach, RN3, on
14 June 5, 2015, and by Dr. Sara Smith, MD, on October 1, 2015. Dr. Smith had the option to
15 recommend treatment for Mr. Reed but did not, instead referring his case to the Hepatitis C
16 Care Review Committee (“CRC”). On information and belief, her decision was based on the
17 triage protocol the DOC adopted on May 1, 2015.

18 15. On January 7, 2016, the CRC denied Mr. Reed’s request for Hepatitis C
19 treatment. The CRC’s denial was based on Mr. Reed not meeting the criteria for treatment
20 contained in the DOC’s Hepatitis C protocol. The CRC noted that his METAVIR score was
21 only an F2 and that he would likely die of an alternative process. Under the May 1, 2015
22 triage protocol, patients with METAVIR scores of F2 or below were not eligible for treatment
23 unless they had extrahepatic (involving organs other than the liver) manifestations of Hepatitis
24 C. Mr. Reed had numerous extrahepatic symptoms that have been associated with Hepatitis C
25 (and that he attributed to his Hepatitis C), including pain, excruciating headaches, muscle
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1 spasms, skin conditions, fatigue and loss of energy, dizziness, mood swings, forgetfulness,
2 and other conditions and functional limitations.

3 16. Mr. Reed was nevertheless informed that he did not qualify for treatment
4 under the DOC's triage protocol. Instead, the CRC recommended that his condition be
5 monitored every year and he be reassessed on a yearly basis for treatment eligibility under this
6 protocol.

7 17. Mr. Reed utilized the DOC grievance process to appeal the CRC's treatment
8 decision. He filed a Level I grievance on January 21, 2016 against Dr. Smith, the members of
9 the CRC, the Director of Health Services, and the Department of Corrections, arguing that he
10 should receive treatment for Hepatitis C. The grievance was disapproved, again denying Mr.
11 Reed a treatment opportunity. Mr. Reed appealed this grievance to Level II of the DOC's
12 grievance system, this time also naming Steven Hammond, Lara Strick, "Smith MD," then-
13 DOC Secretary Dan Pacholke, and the members of the CRC that voted against providing him
14 with care. This grievance was disapproved as well, and Mr. Reed appealed to grievance Level
15 III. Again, his grievance was disapproved, resulting in a final decision to deny him medical
16 treatment for his serious medical need. Instead of being treated, Mr. Reed was to be
17 monitored every year and reevaluated for treatment eligibility.

18 18. In the years that followed, his condition was inadequately monitored. After
19 the CRC's decision, no monitoring of any kind was done of Mr. Reed's Hepatitis C for over a
20 year, until a blood test was conducted on January 31, 2017 to measure Mr. Reed's AST
21 Platelet Ratio Index ("APRI"). APRI measures certain aspects of Hepatitis C activity but does
22 not provide a METAVIR score, which was the basis for treatment decisions and eligibility
23 under the then-current Hepatitis C treatment protocol.

24 19. At no point prior to June 20, 2017 did the DOC assess Mr. Reed's METAVIR
25 score to determine how far the disease had progressed. No tests were administered to
26 determine a METAVIR score despite the fact that the DOC had, and used, a device called a

1 Fibroscan that could measure METAVIR scores in a non-invasive manner without requiring a
2 liver biopsy. Mr. Reed has not received any explanation for why he was not monitored with a
3 Fibroscan prior to June 20, 2017. In addition, no METAVIR scores were assessed despite the
4 fact that Mr. Reed's treatment decision from the CRC called for him to be evaluated for
5 treatment on a yearly basis. Under the applicable DOC protocol, this treatment decision was
6 supposed to be based on Mr. Reed's METAVIR score.

7 20. No monitoring of any kind was conducted in 2016.

8 21. In October, 2016, the DOC's Hepatitis C protocol changed. Under the new
9 protocol, patients with a METAVIR score of F2 or higher were to be given the highest
10 treatment priority for anti-viral medication.

11 22. Under this new protocol, Mr. Reed was eligible for the highest treatment
12 priority based on his previously established METAVIR score of F2. However, on information
13 and belief, Mr. Reed was still not given the highest treatment priority and/or no action was
14 taken to advance his treatment. Moreover, on information and belief, no one at the DOC
15 informed Mr. Reed of the new protocol or conducted an adequate review of existing Hepatitis
16 C patients after the new protocol was adopted. Furthermore, no one at the DOC sought to
17 determine which patients should have been given a higher treatment priority based on existing
18 METAVIR scores, and what should be done to advance treatment for patients like Mr. Reed
19 in light of this new policy. For example, no one met with Mr. Reed to explain his change of
20 priority under the policy, and no one recommended additional testing to determine when Mr.
21 Reed should receive treatment relative to other inmates.

22 23. On January 31, 2017, Mr. Reed was given a blood test to assess his APRI
23 score. However, at this time, his treatment priority did not change and he was never notified
24 of the change in protocol that made him eligible for DAA treatment, despite the fact that the
25 DOC medical staff were supposedly monitoring his condition.

1 24. On February 2, 2016, Mr. Reed sent Dr. Hammond a formal Notice of
2 Complaint that he was being denied necessary medical care for a serious medical condition.
3 On February 5, 2016, he sent another letter to both Dr. Hammond and Dr. Strick indicating
4 that he was being denied necessary medical care for a serious medical condition.

5 25. Finally, on June 20, 2017, Mr. Reed's liver was assessed with a Fibroscan.
6 The Fibroscan determined that his Hepatitis C had progressed to a METAVIR score of F4,
7 indicating severe scarring of the liver called cirrhosis.

8 **PERSONAL PARTICIPATION AND EXHAUSTION**

9 26. Defendant Steven Hammond, MD, who was at all times material hereto the
10 Chief Medical Officer for the DOC, personally participated in denying Mr. Reed medical
11 treatment as a member of the CRC that denied him care for his Hepatitis C. In addition, he
12 was involved in the grievance process under which Mr. Reed was again denied the
13 opportunity to access medical treatment. He also signed the DOC medical protocol for
14 treatment of Hepatitis C that was adopted on May 5, 2015, and under which Mr. Reed was
15 denied medical care. Dr. Hammond received two notices from Mr. Reed that were submitted
16 on February 2 and February 5, 2016, indicating that Mr. Reed was being denied needed
17 medical care. Dr. Hammond did not act to provide the requested medical care in response to
18 those notices. Dr. Hammond also personally participated in denying Mr. Reed medical
19 treatment by failing to initiate review of patient treatment priorities for Hepatitis C following
20 a protocol change in October, 2016 that would have resulted in Mr. Reed receiving needed
21 medical treatment sooner than he otherwise did. In denying medical treatment to Mr. Reed,
22 Dr. Hammond acted with deliberate indifference to Mr. Reed's serious medical need under
23 color of law. Mr. Reed exhausted administrative remedies with respect to Dr. Hammond by
24 naming "Members of the Care Review Committee" and "Steven Hammond/DOC Chief
25 Medical Ofcr" in his administrative grievance in connection with the events that form the
26 basis of these claims.

1 27. Defendant Lara Strick, MD, who was at all times material hereto the
2 Statewide Infectious Diseases Physician for the DOC, personally participated in denying Mr.
3 Reed medical treatment as a member of the CRC that denied medical treatment to Mr. Reed.
4 In addition, on information and belief, she was involved in the grievance process that again
5 denied Mr. Reed the opportunity to access medical treatment. Dr. Strick also received a
6 notice from Mr. Reed that was submitted on February 5, 2016, indicating that Mr. Reed was
7 being denied needed medical care. Dr. Strick did not act to provide the requested medical
8 care in response to those notices. Dr. Strick also personally participated in denying Mr. Reed
9 medical treatment by failing to initiate review of patient treatment priorities for Hepatitis C
10 following a protocol change in October, 2016 that would have resulted in Mr. Reed receiving
11 needed medical treatment sooner than he otherwise did. In denying medical treatment to Mr.
12 Reed, Dr. Strick acted with deliberate indifference to Mr. Reed's serious medical need under
13 color of law. Mr. Reed exhausted administrative remedies with respect to Dr. Strick by
14 naming "Members of the Care Review Committee" and "Lara Strick, MD/DOC Specialist
15 Proto Control" in his administrative grievance in connection with the events that form the
16 basis of these claims.

17 28. Defendant Rob Weber, who was the Health Services Manager for the DOC at
18 all times material hereto, personally participated in denying Mr. Reed medical treatment by
19 failing to initiate review of patient treatment priorities for Hepatitis C following a protocol
20 change in October, 2016 that would have resulted in Mr. Reed receiving needed medical
21 treatment sooner than he otherwise did. By doing so, he denied Mr. Reed access to needed
22 medical treatment. On information and belief, he was also involved in the grievance process
23 that denied Mr. Reed access to medical treatment on appeal from the CRC. Mr. Weber acted
24 with deliberate indifference to Mr. Reed's serious medical need under color of law. Mr. Reed
25 exhausted his administrative remedies with respect to Mr. Weber by naming the "Director of
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1 Health Services” in his administrative grievance in connection with the events that form the
2 basis of these claims.

3 29. On information and belief, defendant Sara Smith, MD, was at all times
4 material hereto the Facility Medical Director for Stafford Creek Corrections Center. Dr.
5 Smith personally participated in denying Mr. Reed medical treatment by failing to initiate
6 review of patient treatment priorities for Hepatitis C following a protocol change in October,
7 2016 that would have resulted in Mr. Reed receiving needed medical treatment sooner than he
8 otherwise did. In denying medical treatment to Mr. Reed, Dr. Smith acted with deliberate
9 indifference to Mr. Reed’s serious medical need under color of law. Mr. Reed exhausted his
10 administrative remedies with respect to Dr. Smith by naming “Dr. Smith” and “Smith MD” in
11 his administrative grievance in connection with the events that form the basis of these claims.

12 30. On information and belief, Defendants John Does No. 1-6 were at all times
13 material hereto medical providers employed by the DOC and were members of the CRC that
14 denied needed medical treatment to Mr. Reed. In denying medical treatment to Mr. Reed,
15 these Defendants acted with deliberate indifference to Mr. Reed’s serious medical need under
16 color of law. Each of these defendants personally participated in denying Mr. Reed medical
17 care by deciding to deny him treatment for Hepatitis C. Mr. Reed exhausted administrative
18 remedies with respect to each of these defendants by naming “Members of the Care Review
19 Committee” in his administrative grievance in connection with the events that form the basis
20 of these claims.

21 **CLAIMS FOR RELIEF**

22 31. Plaintiff incorporates by reference the allegations set forth in paragraphs 1
23 through 31 as if fully set forth herein.

Claim I -- Violation of the Eighth Amendment to the United States Constitution

32. Defendants, acting under color of law and in the performance of their official duties under state law, deprived Mr. Reed of his Eighth Amendment right to be free from cruel and unusual punishment.

33. Mr. Reed faced a substantial risk of serious harm due to his Hepatitis C, a serious medical need.

34. Defendants were recklessly and deliberately indifferent to Mr. Reed's serious medical need because they knew of Mr. Reed's Hepatitis C and need for treatment, but they failed to take reasonable measures to address it or provide treatment.

35. Defendants were recklessly and deliberately indifferent to Mr. Reed's serious medical need when they prescribed or acquiesced in a treatment plan for Mr. Reed that was medically unacceptable.

36. Defendants were recklessly and deliberately indifferent to Mr. Reed's serious medical need when they failed to adequately follow the treatment plan that was prescribed for him. Specifically, they failed to properly monitor the progression of Mr. Reed's Hepatitis C. Mr. Reed's treatment plan called for yearly monitoring, and Mr. Reed was not monitored in any manner at any point in 2016. Moreover, the monitoring that did occur was insufficient because it did not utilize tests and procedures, such as a Fibroscan, that were available to the DOC and that would have detected the progression of Mr. Reed's Hepatitis C.

37. Defendants were recklessly and deliberately indifferent to Mr. Reed's serious medical need when they adopted and implemented a triage protocol under which patients with METAVIR scores of F2 or below were denied treatment. On information and belief, this triage protocol was adopted based on financial considerations, not medical judgment, and the protocol was kept in place even after resource constraints no longer dictated that it was necessary. Moreover, the triage protocol did not regularly account for whether resource constraints actually demanded that the policy be kept in place.

38. Defendants were recklessly and deliberately indifferent to Mr. Reed's serious medical need when they failed to provide him with treatment even after the DOC's Hepatitis C protocol changed to give the highest treatment priority to patients with a METAVIR score of F2, which Mr. Reed had.

39. Defendants Dr. Hammond, Dr. Strick, Mr. Weber, and Dr. Smith were recklessly and deliberately indifferent to Mr. Reed's serious medical need when they failed to conduct an adequate review of treatment priorities and treatment decisions, or advance Mr. Reed's treatment, after the DOC's Hepatitis C protocol changed to give the highest treatment priority to patients with a METAVIR score of F2 or higher. For example, no one met with Mr. Reed to explain his change in priority under the policy, and no one recommended additional testing to determine when Mr. Reed should receive treatment relative to other inmates. Such a review would have revealed that Mr. Reed's treatment should have been advanced based on his METAVIR score of F2.

40. Defendants Dr. Hammond and Dr. Strick were recklessly and deliberately indifferent to Mr. Reed's serious medical need when they failed to provide him with treatment even after being notified in writing of his serious medical need.

41. Defendants' reckless and deliberate indifference to Mr. Reed's serious medical need caused Mr. Reed to suffer cirrhosis, pain and suffering, and permanent damage to his liver, health, and well-being.

Claim II -- Medical Negligence

42. This claim is brought only against those defendants who are medical doctors (the “Medical Malpractice Defendants.”

43. The Medical Malpractice Defendants acted negligently in denying Mr. Reed treatment for Hepatitis C, giving rise to a claim for medical negligence under RCW 7.70.040.

1 44. The Medical Malpractice Defendants had a duty to exercise the degree of
2 skill, care, and learning expected of a reasonably prudent medical professional in Washington
3 from 2015-2017 acting under similar circumstances.

4 45. In denying Mr. Reed treatment for Hepatitis C, the Medical Malpractice
5 Defendants failed to exercise the degree of skill, care, and learning expected of reasonably
6 prudent medical professionals in Washington from 2015-17 acting under similar
7 circumstances. Defendants breached this standard of care by undertaking the following acts.

8 46. The Medical Malpractice Defendants prescribed or acquiesced in a treatment
9 plan for Mr. Reed that no reasonably prudent medical doctor in Washington from 2015-17
10 acting under similar circumstances would have prescribed.

11 47. The Medical Malpractice Defendants failed to adequately follow the treatment
12 plan that was prescribed for Mr. Reed. Specifically, they failed to properly monitor the
13 progression of Mr. Reed's Hepatitis C. Mr. Reed's treatment plan called for yearly
14 monitoring, and Mr. Reed was not monitored in any manner at any point in 2016. Moreover,
15 the monitoring that did occur was insufficient because it did not utilize tests and procedures,
16 such as a Fibroscan, that were available to the DOC and that would have detected the
17 progression of Mr. Reed's Hepatitis C.

18 48. The Medical Malpractice Defendants failed to provide Mr. Reed with
19 treatment even after the DOC's Hepatitis C protocol changed to give the highest treatment
20 priority to patients with a METAVIR score of F2, which Mr. Reed had.

21 49. Defendants Dr. Hammond, Dr. Strick, Mr. Weber, and Dr. Smith failed to
22 conduct an adequate review of treatment priorities and treatment decisions after the DOC's
23 Hepatitis C protocol changed to give the highest treatment priority to patients with a
24 METAVIR score of F2 or higher. They also failed to take the action necessary to advance
25 treatment that would have resulted from such a review. For example, no one met with Mr.
26 Reed to explain his change of priority under the policy, and no one recommended additional

1 testing to determine when Mr. Reed should receive treatment relative to other inmates. Such a
2 review would have revealed that Mr. Reed's treatment should have been advanced and he
3 should have been given the highest treatment priority based on his already known METAVIR
4 score of F2.

5 50. The Medical Malpractice Defendants' negligence proximately caused injuries
6 to Mr. Reed, including cirrhosis, pain and suffering, and permanent damage to his liver,
7 health, and well-being.

8 **DEMAND FOR JURY TRIAL**

9 51. Plaintiff demands a jury trial for all issues so triable as permitted by the
10 Federal Rules of Civil Procedure.

11 **RELIEF REQUESTED**

12 52. WHEREFORE, Plaintiffs pray for the following relief, jointly and severally,
13 against the Defendants:

14 53. For general and special compensatory damages, including emotional distress
15 damages, against all Defendants in an amount adequate to compensate Plaintiff for his harms
16 and losses;

17 54. For punitive damages against all Defendants in an amount to be proven at
18 trial;

19 55. To the extent monetary damages are awarded, for prejudgment interest and
20 postjudgment interest on such damages;

21 56. For reasonable attorney's fees, expert fees, costs, and expenses pursuant to the
22 provisions of 42 U.S.C. §1988 or any other applicable law; and

23 57. For such other and further relief as the court deems just and equitable.

24 **COMPLIANCE WITH RCW 7.70.160**

25 58. Pursuant to RCW 7.70.160, the attorney signing below certifies that to the
26 best of the Plaintiff's and attorney's knowledge, information, and belief, formed after

1 reasonable inquiry, this complaint is not frivolous, and is well grounded in fact and is
2 warranted by existing law or a good faith argument for the extension, modification, or reversal
3 of existing law, and that it is not interposed for any improper purpose, such as to harass or to
4 cause frivolous litigation.

5 DATED this 25th day of January, 2019.

6
7 K&L GATES LLP

8 By: s/ Danny Kelly-Stallings
9 Danny Kelly-Stallings, WSBA # 44445

10 *Attorney for Plaintiff Charles V. Reed*
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